

# PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

## INSTRUCTIONS

Read all instructions carefully. Failure to comply with the instructions or forms contained herein may result in the dismissal of your action.

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and subscribed to under penalty of perjury as being true and correct. Any false statement of a material fact may serve as the basis for prosecution and conviction of perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted, except that the *facts* (not case citations) which you rely upon to support your grounds for relief may be set forth on additional pages. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum in compliance with Local Rule 3.01(c).
- (3) Upon receipt of a fee of \$5.00, your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed *in forma pauperis* by fully completing an Affidavit of Indigency, which also requires a computer printout or authorized financial statement reflecting the transactions in the inmate account for the six (6) months preceding the filing of the petition. The Court may assess an initial partial filing fee; however, the entire \$5.00 filing fee must eventually be paid.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, *the original and two copies* must be mailed to the division which is applicable to your case. Generally, a petition for a writ of habeas corpus should be filed in the division where the judgment under attack was entered. Write the name of the division in which you will file your petition in the blank near the middle of the first page of the petition form and in the blank at the top of the first page of the Affidavit of Indigency.

**The following counties comprise the Tampa Division:** Hardee, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk and Sarasota. Complaints filed in the Tampa Division should be mailed to the Clerk's Office, United States District Court, Sam M. Gibbons US Courthouse, 801 N. Florida Avenue, Room 218, Tampa, Florida 33602-3800.

**The following counties comprise the Ft. Myers Division:** Charlotte, Collier, DeSoto, Glades, Hendry and Lee. Complaints filed in the Ft. Myers Division should be mailed to the Clerk's Office, United States District Court, US Courthouse & Federal Building, 2110 First Street, Room 2-194, Fort Myers, FL 33901-3083.

**The following counties comprise the Orlando Division:** Brevard, Orange, Osceola, Seminole and Volusia. Complaints filed in the Orlando Division should be mailed to the Clerk's Office, United States District Court, George C. Young US Courthouse, 80 N. Hughey Avenue, Room 300, Orlando, Florida 32801-9975.

**The following counties comprise the Jacksonville Division:** Baker, Bradford, Clay, Columbia, Duval, Flagler, Hamilton, Nassau, Putnam, St. Johns, Suwannee and Union. Complaints filed in the Jacksonville Division should be mailed to the Clerk's Office, United States District Court, US Courthouse, 300 North Hogan Street, Suite 9-150, Jacksonville, Florida 32202-4271.

**The following counties comprise the Ocala Division:** Citrus, Lake, Marion and Sumter. Complaints filed in the Ocala Division should be mailed to the Clerk's Office, United States District Court, Golden-Collum Memorial Federal Building and US Courthouse, 207 N.W. Second Street, Room 337, Ocala, Florida 34475-6666.

Rev. 9/03

# FORM FOR USE IN APPLICATIONS FOR HABEAS CORPUS UNDER U.S.C. §2254

NAME: \_\_\_\_\_

PRISON NUMBER: \_\_\_\_\_

NAME OF PLACE OF CONFINEMENT: \_\_\_\_\_

ADDRESS OF PLACE OF CONFINEMENT:

\_\_\_\_\_

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UNITED STATES DISTRICT COURT - MIDDLE DISTRICT OF FLORIDA

CASE NO. \_\_\_\_\_

(TO BE SUPPLIED BY CLERK OF U.S. DISTRICT COURT)

\_\_\_\_\_, PETITIONER  
(FULL NAME) (INCLUDE NAME UNDER WHICH YOU WERE CONVICTED)

VS.

\_\_\_\_\_, RESPONDENT  
(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER)

AND THE ATTORNEY GENERAL OF THE STATE OF FLORIDA, \_\_\_\_\_

\_\_\_\_\_, ADDITIONAL RESPONDENT.

(If petitioner is attacking a judgment which imposed a sentence to be served in the *future*, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the *future* under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

## PETITION

1. Name and location of court which entered the judgment of conviction under attack:

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2. Date of judgment of conviction: \_\_\_\_\_

3. Length of sentence: \_\_\_\_\_

4. Sentencing judge: \_\_\_\_\_

5. Nature of offense or offenses for which you were convicted: \_\_\_\_\_

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6. What was your plea? (Check one)

(a) Not guilty ( )

(b) Guilty ( )

(c) Nolo contendere ( )

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

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7. Kind of trial (Check one)

(a) Jury ( ) (b) Judge only ( )

8. Did you testify at the trial? Yes ( ) No ( )

9. Did you appeal from the judgment of the conviction? Yes ( ) No ( )

10. If you did appeal, answer the following:

(a) Name of Court \_\_\_\_\_

(b) Result \_\_\_\_\_

(c) Date of Result \_\_\_\_\_

If you filed a second appeal or filed a petition for certiorari in the Florida Supreme Court or the United States Supreme Court, give details:

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11. State *concisely* every ground on which you claim you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground.

**CAUTION:** In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by a plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequence of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, (where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim).

- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, (where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim).
- (e) Conviction obtained by violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by the violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: \_\_\_\_\_

Supporting **FACTS** (tell your story *briefly* without citing cases or law):

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Exhaustion of ground one in the state courts:

(1) Did you raise ground one in the appropriate Florida District Court of Appeals on a direct appeal of your conviction? Yes ( ) No ( )

(2) After your conviction did you raise ground one in the state circuit court that sentenced you by filing a Florida Rule 3.850 Motion to Vacate, Set Aside, or Correct Sentence? Yes ( ) No ( )

(a) If your answer is "yes", then state:

i. Whether you received an evidentiary hearing \_\_\_\_\_

ii. The result \_\_\_\_\_

iii. The date of the result \_\_\_\_\_

(b) If your Rule 3.850 Motion was denied, then did you file an appeal of that denial with the appropriate Florida District Court of Appeals? Yes ( ) No ( )

i. If you failed to appeal the denial of your Rule 3.850 motion, then explain briefly why you did not

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- (3) Have you raised ground one in any other petition, application, or motion filed in the state courts of Florida? Yes ( ) No ( )

If your answer is yes, then give the details, including the grounds raised, the court's decision, and the date of said decision for each such petition, application, or motion

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B. Ground two: \_\_\_\_\_  
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Supporting **FACTS** (tell your story *briefly* without citing cases or law):

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Exhaustion of ground two in the state courts:

(1) Did you raise ground two in the appropriate Florida District Court of Appeals on a direct appeal of your conviction? Yes ( ) No ( )

(2) After your conviction did you raise ground two in the state circuit court that sentenced you by filing a Florida Rule 3.850 Motion to Vacate, Set Aside, or Correct Sentence? Yes ( ) No ( )

(a) If your answer is "yes", then state:

i. Whether you received an evidentiary hearing \_\_\_\_\_

ii. The result \_\_\_\_\_

iii. The date of the result \_\_\_\_\_

(b) If your Rule 3.850 Motion was denied, then did you file an appeal of that denial with the appropriate Florida District Court of Appeals? Yes ( ) No ( )

i. If you failed to appeal the denial of your Rule 3.850 motion, then explain briefly why you did not

\_\_\_\_\_  
\_\_\_\_\_

- (3) Have you raised ground two in any other petition, application, or motion filed in the state courts of Florida? Yes ( ) No ( )

If your answer is yes, then give the details, including the grounds raised, the court's decision, and the date of said decision for each such petition, application, or motion

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C. Ground three: \_\_\_\_\_

Supporting **FACTS** (tell your story *briefly* without citing cases or law):

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Exhaustion of ground three in the state courts:

(1) Did you raise ground three in the appropriate Florida District Court of Appeals on a direct appeal of your conviction? Yes ( ) No ( )

(2) After your conviction did you raise ground three in the state circuit court that sentenced you by filing a Florida Rule 3.850 Motion to Vacate, Set Aside, or Correct Sentence? Yes ( ) No ( )

(a) If your answer is "yes", then state:

i. Whether you received an evidentiary hearing \_\_\_\_\_

ii. The result \_\_\_\_\_

iii. The date of the result \_\_\_\_\_

(b) If your Rule 3.850 Motion was denied, then did you file an appeal of that denial with the appropriate Florida District Court of Appeals? Yes ( ) No ( )

i. If you failed to appeal the denial of your Rule 3.850 motion, then explain briefly why you did not

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- (3) Have you raised ground three in any other petition, application, or motion filed in the state courts of Florida? Yes ( ) No ( )

If your answer is yes, then give the details, including the grounds raised, the court's decision, and the date of said decision for each such petition, application, or motion

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D. Ground four:\_\_\_\_\_

Supporting **FACTS** (tell your story *briefly* without citing cases or law):\_\_\_\_\_

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Exhaustion of ground four in the state courts:

(1) Did you raise ground four in the appropriate Florida District Court of Appeals on a direct appeal of your conviction? Yes ( ) No ( )

(2) After your conviction did you raise ground four in the state circuit court that sentenced you by filing a Florida Rule 3.850 Motion to Vacate, Set Aside, or Correct Sentence?  
Yes ( ) No ( )

(a) If your answer is "yes", then state:

i. Whether you received an evidentiary hearing \_\_\_\_\_

ii. The result\_\_\_\_\_

iii. The date of the result\_\_\_\_\_

(b) If your Rule 3.850 Motion was denied, then did you file an appeal of that denial with the appropriate Florida District Court of Appeals? Yes ( ) No ( )

i. If you failed to appeal the denial of your Rule 3.850 motion, then explain briefly why you did not

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- (3) Have you raised ground four in any other petition, application, or motion filed in the state courts of Florida? Yes ( ) No ( )

If your answer is yes, then give the details, including the grounds raised, the court's decision, and the date of said decision for each such petition, application, or motion

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12. Other than a direct appeal and other than the post conviction motions disclosed in your answer to question 11 above regarding exhaustion of state remedies, have you previously filed any petitions, applications, or motions with respect to this judgment and conviction in any court, state or federal? Yes ( ) No ( )

13. If your answer to 12 was "yes", give the following information:

(a) (1) Name of court\_\_\_\_\_

(2) Nature of proceeding\_\_\_\_\_

(3) Grounds raised\_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ( ) No ( )

(5) Result\_\_\_\_\_

(6) Date of result\_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court\_\_\_\_\_

(2) Nature of proceeding\_\_\_\_\_

(3) Grounds raised\_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ( ) No ( )

(5) Result\_\_\_\_\_

(6) Date of result\_\_\_\_\_

(c) Did you appeal to the highest court having jurisdiction the result of any action taken on any petition, application or motion:

(1) First petition, etc. Yes ( ) No ( )

(2) Second petition, etc. Yes ( ) No ( )

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ( ) No ( )



15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At the preliminary hearing \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(b) At arraignment and plea \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) At trial \_\_\_\_\_

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(d) At sentencing \_\_\_\_\_

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(e) On appeal \_\_\_\_\_

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(f) In any post-conviction proceeding \_\_\_\_\_

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(g) On appeal from any adverse ruling in post-conviction proceeding \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ( ) No ( )

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes ( ) No ( )

(a) If so, give name and location of court which imposed sentence to be served in the future:

\_\_\_\_\_  
\_\_\_\_\_  
(b) And give date and length of sentence to be served in the future:\_\_\_\_\_

\_\_\_\_\_  
(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes ( ) No ( )

Wherefore, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

**I UNDERSTAND THAT ANY FALSE STATEMENT OR ANSWER TO ANY QUESTIONS IN THIS APPLICATION WILL SUBJECT ME TO THE PENALTIES OF PERJURY (A FINE OF \$10,000 OR IMPRISONMENT FOR FIVE (5) YEARS, OR BOTH).**

I declare that under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Attorney (If Any)